

**BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

IN THE MATTER OF:)	Case No. 3257M
)	
PHILO ROGERS, D.O.)	FINDINGS OF FACT,
Holder of License No. 2809 for the)	CONCLUSIONS OF LAW,
practice of osteopathic medicine in the)	AND ORDER OF CENSURE
State of Arizona.)	
_____)	

On October 14, 2003, the AZ Board of Osteopathic Examiners (hereafter "Board") notified Philo Rogers, D.O. (hereafter "Respondent") of a complaint based upon the settlement of a malpractice action filed in Superior Court of Arizona, Maricopa County (CV2001-006461). Respondent responded on January 9, 2004.

On June 23, 2004, Respondent was notified that the complaint would be reviewed at the Board's July 31, 2004 meeting and that he had the right to attend that meeting. Respondent did not appear at the meeting.

At their meeting on July 31, 2004, the Board reviewed the complaint and voted to invite Respondent to participate in an informal, investigative hearing on the matter, scheduled for September 11, 2004, at 9535 E. Doubletree Ranch Rd., Scottsdale AZ 85258. On August 11, 2004, Respondent agreed to participate in the informal, investigative hearing.

On September 11, 2004 the Board conducted the informal, investigative hearing. Respondent was present; he was not represented by an attorney.

After hearing testimony and considering the documents submitted, the Board voted to direct staff to prepare a document containing the Findings of Fact and Conclusions of Law, and Order of Censure, for the Board's final review and vote at their meeting on October 23, 2004. At their meeting on October 23, 2004, the Board voted to enter the following Findings of Fact and Conclusions of Law, and Order of Censure.

JURISDICTIONAL STATEMENTS

1. The Board is empowered, pursuant to A.R.S. § 32-1800 *et seq.*, to regulate the practice of osteopathic medicine in the State of Arizona, and the conduct of the persons licensed, registered, or permitted to practice osteopathic medicine in the State of Arizona.
2. The Board is required, pursuant to A.R.S. § 32-3203, to investigate reported malpractice complaints to determine if the licensee is in violation of A.R.S. § 32-1800 *et seq.*
3. Respondent was issued License No. 2809 by the Board for the practice of osteopathic medicine in the State of Arizona.

FINDINGS OF FACT

4. As Medical Director of White House Adult Care Center (hereafter "Care Center"), Respondent assumed primary care of patient B.S. on or about November 17, 2000, when the patient was transferred from St. Luke's Behavioral to the Care Center. Patient B.S. was at the Care Center until December 15, 2000 when he was re-admitted to St. Luke's Hospital, where he died on December 17, 2000.
5. Respondent testified that he never went to the Care Center or saw the patient in the four weeks patient B.S. was at the Care Center, but instead relied on the nursing staff to inform him of the patient's condition.
6. Respondent testified that he would come to the Care Center upon request of the Care Center staff, and he scheduled regular visits to his patients at the Care Center approximately every 30 days, the interval allowed by Medicare billing. Respondent testified that, because the Care Center staff never requested he come to see patient B.S., he would have seen patient B.S. for the first time during a regular visit scheduled to take place the week after December 15, 2000, the date patient B.S. was sent back to the hospital.

7. Respondent testified that he did not call in or write any prescriptions for the patient during the four weeks B.S. was at the Care Center, except for a topical ointment for the patient's sacral decubitus ulcer.
8. Respondent testified that he did not create any medical records for patient B.S. because he had not seen the patient or billed the patient for any services.
9. The standard of care in the osteopathic community is that a doctor/patient relationship is established when a physician accepts care of a patient.
10. The standard of care in the osteopathic community is that a doctor is expected to see and evaluate a new patient within a reasonable period of time.

CONCLUSION OF LAW

The conduct described in paragraphs 4 through 10 A.R.S. § 32-1800 *et seq* above constitutes unprofessional conduct as defined at A.R.S. § 32-1854:

- (6.) Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard.
- (40.) Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

License number 2809, previously issued to Philo Rogers, D.O. ("Respondent") is **CENSURED** effective September 11, 2004.

ISSUED this 27th day of October 2004.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
9535 E. Doubletree Ranch Road, Scottsdale, AZ 84258

By: 
Elaine LeTarte, Executive Director

Notice of Right to Request Review or Rehearing:

You have the right to request a rehearing or review of this matter pursuant to A.R.S. § 41-1092.09. The request for rehearing or review must be filed with the Arizona Board of Osteopathic Examiners within thirty (30) days. If you request a review or rehearing, you must base your request on at least one of the eight grounds for review or rehearing that are allowed under A.A.C. R4-22-106(D). Failure to file a motion for rehearing or review within 30 days has the effect of prohibiting you from seeking judicial review of the Board's decision in the AZ Courts.

Served by Certified Mail 7000 0520 0023 4778 1701
this 28th day of Oct, 2004 to:

Philo Rogers, D.O.
2225 W. Frye Rd., #1085
Chandler AZ 85224

A copy mailed / delivered
this 28th day of Oct, 2004 to:

Blair Driggs, Assistant Attorney General
Office of the Attorney General
15 S. 15th Avenue, 3rd floor
Phoenix AZ 85007

Celina Shepherd

Arizona Administrative Code

Title 4: Commerce, Professions, and Occupations

Chapter 22: Board of Osteopathic Examiners in Medicine and Surgery

R4-22-106. Review of Decision.

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and rules established by the Office of Administrative Hearings.
- B. A party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 - 1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5. Excessive penalty;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 - 7. That the Board's decision is a result of passion or prejudice; or
 - 8. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.